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November 3, 2006

Chairman Michael McGowan
Commissioners, Delta Protection Commission
Linda Fiack, Executive Director
Delta Protection Commission
14215 River Road
Walnut Grove, CA 95690

APPEAL of Action of Yolo County Which is in Violation of the Delta Protection Act and Resource Management Plan for The Primary Zone. (Public Resources Code §29770)

1. Action Being Appealed:

Approval by the Yolo County Board of Supervisors, on October 24, 2006, of the Old Sugar Mill Specific Plan and Design Guidelines, Amendment of Clarksburg General Plan, Rezoning, Development Agreement for the Old Sugar Mill Specific Plan, and related approvals

2. Location of project:

Unincorporated Yolo County, Clarksburg, in the Primary Zone designated by the Delta Protection Act, per map titled "Delta Protection Zones" filed with the Secretary of State.

3. Names of Appellants:

Concerned Citizens of Clarksburg, an unincorporated association, Sierra Club - Yolano Group, Peggy Bohl, Ted Smith, Lorraine Mizuno, Katherine B. Merwin, Jay Allen Eisen, Norman Slater, Joe Peach, John Maas, DVM, Terrence Smith, MD, Derrell Kelso, Mr. and Mrs. Marshall Pylman, Dennis Williams, Jane Klotz, Ramona Ruppert-Schlesinger, Lita Campell, Linda McGregor.

All of these Appellants informed the County of Yolo of the nature of their concerns by letter, appearance at public hearing regarding the project prior to project approval, or by their signatures on a petition signed by some of them and others and presented to the Yolo County Board of Supervisors at their meeting of March 4, 2003. They have therefore with Pub Res. Code §29117.

4. Addresses of Appellants:

c/o: James P. Pachl, Attorney, 717 K Street, Suite 534, Sacramento, CA 95814

FILED

Date: NOV - 3 2006

5. Name and Address of the Party Who Action Is Subject To Local Government Action Being Appealed:

John Carvalho Jr.
Vincent F. Stanich, Jr.
Clarksburg Investments Partners, LLC
PO Box 488
35265 Willow Avenue
Clarksburg, CA 95612

Attorney for Clarksburg Investment Partners is:
Timothy Taron, Esq.
Hefner, Stark, & Marois
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833

6. Name and Address of the Local Government Entity Whose Action Is Being Appealed:

Yolo County Board of Supervisors
c/o: Yolo County Administrative Officer
625 Court Street, Room 202
Woodland, CA 95695

7. Description of the Action Being Appealed:

The action being appealed is the approval by Yolo County Board of Supervisors, on October 24, 2006, of the Old Sugar Mill Specific Plan and Design Guidelines, Amendment of Clarksburg General Plan, Rezoning, Development Agreement for the Old Sugar Mill Specific Plan, and related approvals, which affects a 105.4-acre site immediately north of the unincorporated town of Clarksburg, adjacent to the east levee of the Sacramento River.

8. Specific Ground for Appeal:

The site is in the Primary Zone of the Delta. County's adoption of the Specific Plan, Development Agreement, rezoning, and related approvals is inconsistent with the Delta Protection Act, the Land Use and Resource Management Plan for the Primary Zone, and those portions of the Yolo County General Plan that implement the Resources Management Plan, as discussed below.

Appellants reserve the right to present additional evidence and argument prior to and at hearing of this matter. This Appeal incorporates herein by reference all grounds for appeal stated by Appellant National Resources Defense Council, represented by Earthjustice, which was filed on November 3, 2006.

Prior to hearing, undersigned counsel for Appellants will provide a supplemental memorandum, reports, and exhibits regarding issues of flood protection and levees, relevant to Land Use Policies P-4, P-7, and Levee Policies P-1 and P-3.

9. Statement of Facts:

The 105.4-acre site, comprised of four assessors parcels, was designated as "I" (Industrial) and zoned M-2 (heavy industrial) by the 1982 Clarksburg General Plan (part of the Yolo County General Plan) adopted by the Yolo County Board of Supervisors on August 24, 1982. It was wholly owned by Delta Sugar Corporation and contained a large sugar beet processing plant, constructed in 1934, miscellaneous structures, wastewater ponds for effluent generated by processing of sugar beets (not human sewage), outdoor parking, and a dump site.

The Delta Protection Act was adopted in 1992. The sugar beet processing plant ceased operation in 1993 or 1994. Yolo County incorporated the Land Use and Resources Plan for the Primary Zone into its General Plan in October 1995. There were no changes of the local land use designations until the 2001 Clarksburg General Plan, which designated the site as Specific Plan, to be planned at a future date, and retained the M-2 (heavy industrial) zoning. In 2004, the present owners converted part of the buildings and site to a winery which processes wine grapes and bottles wine. There are presently winery-related retail and miscellaneous other minor industrial uses. There are large mounds of lime, a by-product of processing of sugar beets, on the site. The present owners have been removing and selling the lime. The dump site is overgrown.

The Specific Plan, Amendment of General Plan, Rezoning, Development Agreement, and approvals by the Yolo County Board of Supervisors on October 24, 2006, would allow the development of the following uses: 29.7 industrial, 28.2 acres of residential for up to 162 units, 24.7 acres of commercial, 15.7 acres designated as public, 3.2 acres designated as waterfront, and 3.9 acres of roadway.

References to CEQA review, DEIR, (Draft Environmental Impact Report), RDEIR, (Recirculated DEIR), FEIR, (Final EIR) and Mitigation Measures are to documents generated by Yolo County during County's CEQA review of the project being appealed.

A.. The Project Is In The Primary Zone of the Delta

Public Resources Code § 29728 provides that:

"The precise boundary lines of the primary zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission."

Public Resources Code §29760(a) requires that the map of the Primary Zone be a part of the Resource Management Plan "for land uses within the primary zone of the Delta," a clear indication that this plan applies to the areas identified on the map. That map, which was before the legislature when it adopted the Act, is reproduced in the Land Use and Resource Protection Plan, and shows the Clarksburg area as within the Primary Zone.

The California Attorney General submitted a formal letter of opinion to the Commission dated November 30, 1994, **EXHIBIT ONE** which addressed the interpretation of "primary zone" in Pub Res Code § 29728, and certain conflicts between local land use plans and that statute's designation of the Primary Zone.

Consistent with Section 29728, the Attorney General stated that the "precise boundary line of the primary zone includes the land and water areas shown in the map titled 'Delta Protection Zones' on file with the State Lands Commission," and that the Commission is required to rely specifically on the boundary lines shown on this map wherever there may be a conflict between various other criteria described in the text of the statute, citing Section 29728, *supra*. The Attorney General's letter specifically mentioned situations in which specific parcels were included in a City's Sphere of Influence but were located within the area shown as Primary Zone on the map. In such situation, the Attorney General concluded that the statutory Map governed, per Section 29728. The Attorney General's 1994 opinion is directly on point as to the present issue of whether the Old Sugar Mill Specific Plan is in the Primary Zone, wherein County asserts that the project site was within the "Clarksburg Urban Limit Line" in 1992.

The Attorney General's letter suggested that if there were a situation where the boundaries shown on the Primary Zone map seemed clearly illogical, the Commission may formally ask the legislature to correct the problem by amending the Delta Protection Act to make the necessary technical changes to the boundaries of the Primary Zone.

Thereafter, on February 23, 1995, the Delta Protection Commission adopted the Land Use and Resource Management Plan for the Primary Zone of the Delta, which explicitly provided that Clarksburg was in the Primary Zone, stating, at p. 15, first paragraph:

"One incorporated city, Isleton and portions of Stockton, Rio Vista, and Pittsburg, exist in the Secondary Zone. Unincorporated communities lie along the Sacramento River in the Primary Zone including: Clarksburg, Courtland, Hood, Locke, Walnut Grove, and Ryde." (Emphasis added.)

Thereafter, in October 1995, the Yolo County Board of Supervisors incorporated the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta into the Yolo County General Plan. (Old Sugar Mill DEIR, August 2004, p. 4.1-7.) Yolo Supervisors and staff read the text, including the provision, *supra*, on page 15 of the Plan, which stated that Clarksburg and certain other unincorporated communities were in the Primary Zone, reviewed the map of the "Delta Protection Zones", and were aware that that the map shows the Clarksburg area as being wholly within, and part of, the Primary Zone.

The Clarksburg General Plan, 2001, p. 25, adopted by the Yolo County Board of Supervisors, acknowledges that Clarksburg is in the Primary Zone.

The Old Sugar Mill DEIR, August 2004, p. 4.1-7, correctly stated:

"The OSMSP [Old Sugar Mill Specific Plan] is located within the Primary Zone of the Sacramento-San Joaquin River Delta, as defined by §29728 . . . Local general Plans within the Primary Zone must be consistent with the Land Use and resources Management Plan for the Primary Zone of the Delta (Management Plan), adopted by the Delta Protection Commission in 1995, and subsequent project approvals must be consistent with those general plans. Yolo County incorporated its Management Plan into its general plan in October 1995." (Emphasis added.)

However, in the Recirculated DEIR dated November 2005, County reversed its position and asserted, for the first time, that Clarksburg is outside of the Primary Zone. During County's CEQA review process, County asserted the following arguments, which lack merit:

(a) County asserts that Clarksburg is so small that its area cannot be depicted as being a Secondary Zone "island" on the Map of Primary Zone. In fact, the existing town and the project site together are over one mile long and over 1/4 to 1/2 mile wide, which would appear even on the reduced-size copy of the map attached to the Plan booklet, if it were in fact designated as a secondary zone "island", and would most certainly appear on the much larger full-size map in the office of the Secretary of State.

(b) County asserts that the designation of Clarksburg as secondary zone was omitted from the official map due to clerical mistake, which overlooks the legislature's determination that the precise boundary of the Primary Zone was determined by the map adopted by the legislature, (Section 29728), the statement of the Plan itself that Clarksburg was in the Primary Zone, and the County's repeated acknowledgement, by County's adoption of the Plan, and by County's own statements in its 2001 Clarksburg General Plan and DEIR for this project, that Clarksburg was in the Primary Zone.

(c) County asserted that the project site is included within the "urban limit line" of the 1982 Clarksburg General Plan, and therefore is not part of the Primary Zone, even though the Map of the Delta Protection Zones on file with the Secretary of State shows Clarksburg as being a part of the Primary Zone. That issue is resolved by Pub Res Code § 29788, ("The precise boundary lines of the primary zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission"), the Attorney General's 1994 opinion letter interpreting that statute regarding a similar situation (city SOI within the Primary Zone), the Plan's statement, on page 15, that Clarksburg is in the Primary Zone, and the County's continuous acknowledgement, until November 2005, that the area is in the Primary Zone.

Moreover, the County has correctly pointed out, in County's DEIR p. 2.1-64 - 65, that the relevant legislative history indicated that the only lands in the Primary zone which were excluded from Primary Zone jurisdiction are lands within then-existing City urban limit lines and Spheres of Influence. Counties do not have spheres of influence.

During the CEQA review, the County mistakenly asserted that even if the project site is within the Primary Zone, the project is nonetheless exempt from the restrictions of Land Use and Resource Management Plan because Public Resources Code §29723(b)(9), which creates a narrow exception to the broad definition of "development" in §29723(a), exempts the project from the provisions of the Resource Management Plan restricting development within the Primary Zone.

In fact, Section 29723(b)(9) exempts only development "within existing zoning entitlements [then M-2] and development within or adjacent to the unincorporated towns of the delta, as permitted in . . . the general plan of Yolo County, authorized prior to January 1, 1992." This language appears to permit specific development projects which had been authorized prior to 1992. However, the Sugar Mill project was not authorized by the County until October 24, 2006. Moreover, in 1992, only projects consistent with the then-existing M-2 designation of the 1982 Clarksburg General Plan were permissible. The site was then in use as an active sugar beet

processing factory. Even if the County had contemplated a non-manufacturing use (and there is no evidence of that), §29723(b)(9) exempts only projects that were authorized prior to January 1, 1992. "Contemplation" is not authorization.

Moreover, the word "development" as used in the Act appears only in Pub Res. Code §29763.5, which governed the Commission's approval of local governments' general plan amendments which conformed with the Land Use and Resource Management Plan for the Delta; and in Pub Res Code §29765, which affects only specific projects approved prior to the Commission's approval of those general plan amendments of local government which conformed with the Land Use and Resource Management Plan for the Delta. Yolo County's general plan amendments which confirmed its General Plan to the Land Use and Resource Plan were approved by County in October 1995, and by the Commission in 1995 or early 1996. There is nothing in the Act or Plan which makes the exception stated in Section 29723(b)(9) applicable to the provisions of the Land Use and Resource Management Plan for the Delta.

B. The Project Is Inconsistent With The Land Use And Resource Management Plan For The Delta Primary Zone

The Specific Plan, Rezoning, Development Agreement, and related approvals are inconsistent with certain provisions Land Use and Resource Management Plan for the Primary Zone, including but not limited to the following Policies:

Utility and Infrastructure Policy P-3:

"New sewage treatment facilities (including storage ponds) and new areas for disposal of sewage effluent and sewage sludge shall not be located within the Delta Primary Zone. The Rio Vista project . . . and the Ironhouse Sanitary District use of Jersey Island . . . are exempt from this policy."

The County's DEIR, p. 4.1-25, mistakenly asserted that the proposed Specific Plan is consistent with Utility and Infrastructure Policy P-3 because the sewage treatment ponds and areas for disposal of sewage effluent would be located on the site of former ponds which received wastewater created by the process of refining of sugar. However, these ponds were not used for disposal of sewage. The sugar mill used, and presently uses, a septic sewer system. (DEIR p. 3-30.) Moreover, Policy P-3's prohibition on new sewage disposal facilities does not make an exception for new facilities located atop even former sewage ponds. A portion of the proposed effluent disposal area (the "reserve" area) is located outside the former sugar ponds. Nothing in the Land Use Management Plan allowed new sewage facilities atop former sugar processing wastewater ponds.

The FEIR, p. E-11 asserts that the dictionary definition of "sewage" encompasses wastewater from any source, including industrial and non-human. Such a creative interpretation of "sewage" would have Policy P-3 prohibiting any new facility that receives or disposes of wastewater from agriculture or food processing operations in the Primary Zone, which would greatly impede agriculture in the Primary Zone. Obviously, the Commission did not intend such an overbroad interpretation of "sewage" when it enacted Policy P-3. M

This project illustrates the Commissions' wisdom in barring new sewage disposal facilities in the Primary Zone. The sewage treatment system designated in the Specific Plan, a STEP system which collects sewage and disperses it into the ground ("subsurface drip irrigation") via leach-lines from 18" to 3 feet beneath the surface, works only if there is sufficient absorption capacity in the soil. As in much of the Primary Zone, groundwater rises close to the surface when the Sacramento River is high, usually December through late Spring, and even sometimes surfaces. The DEIR and RDEIR acknowledge that this condition sometimes occurs, and that it would impair the leachfield absorption capacity. (DEIR pp. 4.7-18, 4.7-22, 4.12-2, 4.12-16, RDEIR pp. 2.4-31 -32.) The proposed solution is ultraviolet disinfection which automatically triggers when groundwater rises within 5 feet of the surface. (FEIR 2-5.) The Regional Water Quality Control Board expressed serious concerns by letters dated October 19, 2004 and December 19, 2005. (FEIR pp. B-1 -6, XX-3.)

Land Use Policy P-2:

"Local government general plans . . . and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone . . . County plans and ordinances may support transfer of development rights and lot splits with no increase in density, and clustering to support long-term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone."

When the Delta Protection Act was adopted, the site was a sugar mill which processed locally-grown sugar beets, thereby furthering agriculture in the Primary Zone. The site is the only large industrial-zoned site in the Primary Zone in Yolo County remaining as a potential site for new agricultural processing facilities and other activities which would support local agriculture. The Specific Plan is inconsistent with Policy P-2 because it is likely to eliminate the viability of the site for agricultural support industry and facilities, except for the existing winery and potential for retail outlets for other wineries. Non-agricultural neighbors next to agricultural processing facilities often strongly object to noise, dust, night-time operation, and odor of agricultural operations, as explained in the letter of the Yolo County Farm Bureau to County, dated October 10, 2006. (EXHIBIT TWO). Resource Management Plan Finding F-10, lists typical conflicts between agriculture and neighboring residential uses "which have a deleterious impact on agriculture." It is reasonable to conclude that potential new agricultural processing or support facilities may be reluctant to locate on the site because of the proximity to residences authorized by the Specific Plan.

The Specific Plan and rezoning also is inconsistent with Policy P-2 also because it approves the division of the existing four parcels into smaller parcel sizes, increases density, and is intended to support urban development in the Primary Zone. The DEIR p. 4.1-24, incorrectly asserts that the proposed Specific Plan is consistent with Land Use Policy P-2 because it re-uses previously developed industrially-zoned land. This response does not overcome the requirement of Land Use Policy P-2 that County plan and ordinances may support lot splits only if there is no increase in density, and that clustering is not intended to support new urban development in the Primary Zone.

Land Use Policy P-4

"New non-agricultural residential development in the Primary Zone, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided."

The residential component of the Specific Plan is inconsistent with Policy P-4 because:

- (1) there is no existing support structure in Clarksburg for community wastewater disposal and water supply, which is provided by individual septic tanks and wells;
- (2) The State Board of Reclamation and MBK Engineers advise that there is no evidence that the levees protecting Clarksburg meet the current standards of the U.S. Army Corps of Engineers for even 100-year flood protection. Geotechnical testing necessary to confirm the status of the levees has not been performed. There is strong evidence that the levees protecting the site may not meet current Corps standards for 100-year flood protection;
- (3) the Specific Plan and its adopted Mitigation Measures do not require that the Sacramento River levee next to the project, or any other levee protecting Clarksburg, be certified as meeting the current Corps of Engineers standards for 100-year protection at any time in the future;
- (4) there is no evidence that the proposed non-agricultural residential development is needed in the Primary Zone at Clarksburg.

Prior to hearing, undersigned counsel for Appellants will provide a memorandum, reports, and exhibits regarding issues of flood protection and levee relevant to Land Use Policies P-4, P-7, and Levee Policies P-1 and P-3.

Land Use Policy P-7:

"Structures shall be set back from levees and areas which may be needed for future levee expansion."

The Specific Plan allows residences as close as 50 feet from the inland toe of the levee upon completion of geotechnical testing (if required by County at its sole discretion), a "flood prevention plan", and implementation of "feasible mitigation measures" which will be determined at the discretion of the County and applicant. There is no requirement that the levee ever be certified as meeting the current Corps standard for 100-year flood protection, and no requirement for participation or consultation with the California Department of Water Resources, Board of Reclamation, or Corps of Engineers in making any of the determinations called for by the Mitigation Measures of the Specific Plan.

Fifty feet of open area between the Sacramento River levee and structures proposed by the Specific Plan is insufficient to allow levee expansion, unimpeded use of equipment for maintenance or emergency repair, or sufficient unimpeded space for emergency "flood fight" operations. Most existing structures on site are much further from the levee than 50 feet. There has been a history of seepage age through or beneath the levee during high-water years, which could require access for emergency repairs, or even expansion of the base of the levee.. A memorandum and supporting documents on this issue will be provided by undersigned counsel prior to the hearing.

Agricultural Policy P-4:

"Local governments shall support long-term viability of commercial agriculture in the Delta because of its economic and environmental importance to State and local communities.'

The components of the Specific Plan for industrial and commercial use would allow additional food processing and agricultural support activities, which are consistent with Agricultural Policy P-4 and County's existing M-2 zoning. However, the residential component of the Specific Plan may discourage new agricultural food processing facilities and other agricultural support activities on the project site, even though rezoned for such activities, for the reasons stated in first paragraph of the discussion of **Land Use Policy P-2, supra.**

Moreover, repeated experience has demonstrated that construction of dense residential projects in an agricultural area - especially near Sacramento - invariably leads to a relentless campaigning by some nearby landowners, and speculators to re-designate nearby farmlands for urban development or small-parcel "agricultural-residential" (40-acres or less). Such pressure on political bodies in this region usually succeeds, eventually. Division of large agricultural parcels into smaller agricultural-residential parcels is not prohibited by the Delta Protection Act or the Land Use Management Plan. Experience has shown that agriculture inevitably declines or ceases on agricultural-residential parcels of even 80 acres or less due to economic infeasibility of agriculture on small parcels and non-farmer owner disinterest in continuing agriculture. Unfortunately, local government in the region has repeatedly proved all too ready to accede to the relentless entreaties of developers and speculators, and to the perception that new development equates to higher net tax revenues to local government.

Levee Policies P-1:

". . . Levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. . . ."

The Specific Plan allows structures as close as 50 feet from the inland toe of the Sacramento River levee adjacent to the project site, which is inconsistent with Levee Policy P-1, for the same reasons that it is incompatible with Land Use Policies P-4 and P-7, discussed *supra*.

Levee Policy P-3:

". . . local government shall prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety, and welfare.

Increased flood protection shall not result in densities beyond those allowed under zoning and general plan designations in place on January 1, 1992, for lands in the Primary Zone."

Approval of the Specific Plan and related approvals are inconsistent with the requirement of Policy P-3 that local governments prudently carry out their responsibilities to regulate new construction in flood hazard areas to protect public health, safety, and welfare. The 1990 FEMA FIRM which shows Clarksburg as being outside of the 100-year floodplain is outdated and does not reflect current criteria for certification as having 100-year protection nor the increases surface level of the Sacramento River now known to occur during the 100-year flood event. There is no evidence that Clarksburg meets current Corps criteria for 100-year flood protection. Repeated occurrence of seepage during high water on the Sacramento River is evidence of likely

underseepage and through-seepage that could lead to failure of the Sacramento River levee. The Specific Plan, Rezone, and Development Agreement and related approvals are inconsistent with the relevant portion of Levee Policy P-3 for the same reasons that it is inconsistent with Land Use Policies P-4 and P-7, discussed *supra*.

Approval of the Specific Plan is also inconsistent with the requirement of Levee Policy P-3 that "increased flood protection shall not result in densities beyond those allowed under zoning and general plan designations in place on January 1, 1992, for lands in the Primary Zone."

The Specific Plan Mitigation Measures 4.7.7 and 4.7.8 purport to provide increased flood protection and were relied upon by the County in its determination to approve the Specific Plan. The Specific Plan and related approvals increase densities far beyond that allowed under the general plan and zoning designations of "I" (industrial) and "M-2" (heavy manufacturing) in effect on January 1, 1992, for the entire site.

3. **The Specific Plan and Associated Approvals Are Inconsistent With Those Portions Of The Yolo County General Plan That Implement The Resources Management Plan**

Yolo County incorporated the Management Plan into its General Plan in October 1995. (DEIR p. 4.1-7.) Therefore, the project is inconsistent with those provisions of Yolo County's General Plan which are identical or similar to the Land Use and Resource Management Plan for the Delta, discussed *supra*.

Respectfully submitted,


James P. Pachl

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State of California

Department of Justice
1515 K Street, Suite 511
P.O. Box 944255
Sacramento, CA 94244-2550

Memorandum

To : COMMISSIONERS
Delta Protection Commission

Date : November 30, 1994

Telephone: ATSS (8) 485-8178
(916) 445-8178
FACSIMILE (916) 324-5205

From : RICHARD M. FRANK
Supervising Deputy Attorney General
Land Law
Office of the Attorney General - Sacramento

Subject: Commission Jurisdiction--The "Primary Zone"

Recently, several questions have arisen regarding the extent of the Commission's jurisdiction. Specifically, those questions center around the Delta's "primary zone," that area which is the main focus of the Commission's planning responsibilities and appeal jurisdiction under the Delta Protection Act.

This memorandum deals with two particular issues that have arisen in that context: 1) how the statutory definition of the "primary zone," as set forth in section 29728 of the Act, is properly interpreted; and 2) whether the boundaries of the primary zone would change in the future if and when municipalities annex lands that are currently outside city boundaries and within the primary zone.

Interpreting the Statutory Definition of "Primary Zone"

The Commission's principal planning and administrative appeal jurisdiction is limited to the Delta's "primary zone," as that term is defined in Public Resources Code section 29728. That section provides in pertinent part:

"'Primary zone' means the delta land and water area of primary state concern and statewide significance, which is situated within the boundaries of the delta, as described in Section 12220 of the Water Code, but which is not within either the urban limit line or sphere of influence line of any local government's general plan or currently existing studies, as of January 1, 1992. The precise boundary lines of the primary zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the Secretary of State." (Emphasis added.)

We are advised by Commission staff that over the past two years, various discrepancies have arisen in determining which specific parcels are inside or outside of the primary zone. For example, some parcels have been discovered to be within a local

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government's sphere of influence line, but nonetheless located within the area shown on the "Delta Protection Zones" map on file with the Secretary of State. The problem becomes, how does the Commission reconcile these inconsistencies, given the potential confusion generated by the multi-part, statutory definition set forth above?

We believe the answer can be obtained by looking at the plain language of the statutory definition itself. The second sentence of Public Resources Code section 29728 begins, "The precise boundaries of the primary zone..." This passage indicates that, in the event inconsistencies or conflicts arise in determining whether particular properties are or are not within the primary zone, the second sentence--the more "precise" demarcation--controls.

Accordingly, we conclude that where there exists a conflict between the various criteria contained in section 29728, designating the boundaries of the primary zone, the Commission is required to rely specifically on the boundary lines shown on the "Delta Protection Zones" map currently on file with the Secretary of State.

(This does not mean that the Commission is totally without recourse to address situations where the primary zone boundaries, as shown on that map, seem clearly erroneous or illogical. In that case, the Commission may formally request the Legislature to correct the problem(s) by amending the Delta Protection Act to make the necessary, technical changes to the boundaries of the primary zone.

Future City Annexations of Lands Within the Primary Zone

Commissioner Potter asked about the extent of Commission jurisdiction over lands, currently within the primary zone, which in the future are annexed or otherwise brought within a municipality's sphere of influence. As we understand it, the specific question is whether the Commission would retain planning and appeal jurisdiction over such lands in such a case.

We conclude that such lands would, absent legislative action, remain fully subject to Commission jurisdiction.

The statutory definition of the primary zone (Public Resources Code section 29728, quoted above) is fixed in time. That is, the definition describes the primary zone as including, first, to all areas of the Delta as described in Water Code section 12220 except those within local urban limit lines or sphere of influence lines as of January 1, 1992. Section 29728 then goes on to rely specifically on the "Delta Protection Zone" map, which is stated as having been on file with the Secretary of State at

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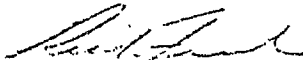
the time the Delta Protection Act took effect--i.e., on January 1, 1993.]

The essential point is that the Delta Protection Act's demarkation of lands within the primary zone is fixed not only on the ground, but in time. Those boundaries were established on or before January 1, 1993, and they will remain fixed--at least for purposes of the Delta Protection Act--until and unless that Act is amended by the Legislature in the future.

Accordingly, it is irrelevant for purposes of ascertaining the proper boundaries of the primary zone whether cities expand into currently-undeveloped portions of the primary zone. The primary zone boundaries remain fixed. All such areas within the primary zone therefore remain subject to the Commission's planning and appeal jurisdiction.

Again, if the Commission, the municipalities involved or affected third parties believe this produces an unsatisfactory result, a remedy exists. The boundaries of the primary zone can be changed to reflect changed circumstances, but only by the Legislature via an amendment to the Delta Protection Act.

Please let us know if you have questions about the issues addressed in this memorandum.



RICHARD M. FRANK
Supervising Deputy Attorney General

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American Farm Bureau Federation/California Farm Bureau Federation

YOLO COUNTY FARM BUREAU

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 Joe F. Martinez
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 Denise Sagara

October 10, 2006

RECEIVED

OCT 17 2006

**CLERK OF THE BOARD
OF SUPERVISORS**

Yolo County Board of Supervisors
 ATTN: Supervisor Frank Siefertman, Jr. Chair
 625 Court Street
 Woodland CA 95695

RE: Old Sugar Mill Specific Plan - Modify

Dear Supervisor Siefertman;

The Yolo County Farm Bureau supports development of the Clarksburg Sugar Mill as a winery and other agricultural industries that would support local commodities. However, we suggest the Old Sugar Mill Specific Plan (OSMSP) be modified for the following reasons:

- 1) Agricultural processing facilities should be distanced from high density residential subdivisions. This proposal to build homes south and east of the winery, coupled with possible future development, could eventually completely surround the winery with housing. Neighbors (especially those not used to agricultural activities) often strongly object to the noise, dust, and timing of agricultural operations. There should be a buffer to protect the winery and agricultural operations. Also, there should be an area available for the winery to expand.
- 2) Plans to build 140 new houses pose numerous problems. This number of houses would double the size of the existing town. Why not build 40 or 60, wait a few years and then develop another 40 or 60? Farm Bureau suggests a phased approach - let the town absorb the new residents and get used to its new size. The local Clarksburg Planning Group approved 40 new houses for the OSMSP. That would be a good number to start with.

We also understand this land is included in the Primary Zone of the Delta Protection Act, which prohibits new residential subdivisions in the Primary Zone. Has this been adequately researched?

In summary, we believe the Old Sugar Mill Specific Plan includes too many houses and does not protect the viability of the new winery and any future agricultural facilities that could be located there. We respectfully request that these concerns be considered prior to final approval of the plan.

Sincerely,

Joe Martinez
 Joe F. Martinez
 President

CCAO, PRTW, Co. Counsel

EXHIBIT TWO